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SEP 20 1985

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Honorable George R. Reynolds
Judge of Probate, Jefferson County
Jefferson County Courthouse
Birmingham, AL 35263

Probate Judges -- Deed Tax --
Mortgage Tax -- Recordation of
Documents -- Bankruptcy

The recordation of a document
in accordance with a confirmed
plan or reorganization under
Chapter 11 of the Bankruptcy
Code is exempt from deed and
mortgage tax.

Opinion by Assistant Attorney
General Charles E. Crumbley

Dear Judge Reynolds:

You requested an opinion of the Attorney General concerning
whether an exemption from deed and mortgage tax existed by virtue
of §1146(c) of the U.S. Bankruptcy Code (Title 11 U.S.C.).

The pertinent portion of Section 1146(c) states as follows:

The issuance, transfer, or exchange of
security, or the making or delivery of an
instrument of transfer under a plan confirmed
under §1129 of this title may not be taxed
under any law imposing a stamp tax or similar
tax.

It is my opinion that the above referenced exemption pro-
vision is applicable to Alabama deed and mortgage tax since it is
within the power of the Congress to establish uniform rules

regarding bankruptcies under Section 8 of the United States Constitution. It should be noted, however, that the exemption is limited in scope.

First, in order to qualify for the exemption, a bankruptcy proceeding under Chapter 11 of the Bankruptcy Code must be in progress. That is, it must be a reorganization rather than a straight bankruptcy under Chapter 7. Second, there must have been confirmation of a plan of reorganization under the §1129 of the Bankruptcy Code. Transfers prior to the confirmation of a plan by the Bankruptcy Court are subject to deed and mortgage tax. See e.g. In re Jacoby-Benderk, Inc., 34 BR 60, 11 BCD 213 (1983, BC ED NY). It is my recommendation that the individual seeking recordation of such a document be required to furnish a copy of the order of the Bankruptcy Court confirming the plan of reorganization prior to recording any document without payment of the taxes thereon.

Provided that the above conditions are met, it is my opinion that such transfers are exempt from deed and mortgage tax at the time of recordation.

Sincerely,

A handwritten signature in cursive script, reading "Charles A. Graddick".

CHARLES A. GRADDICK
Attorney General

CAG:CEC:jt